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SEP 19 1985

14790

WRITER'S DIRECT DIAL NUMBER

(212) 483-5939

SEP 19 1985 - 10 55 AM

INTERSTATE COMMERCE COMMISSION

100 Washington, D.C.

5-262A052

September 13, 1985

FILE SECOND

100 OFFICE OF  
THE SECRETARY  
SEP 19 10 35 AM '85  
MOTOR OPERATING UNIT

\*NOT ADMITTED IN NEW YORK

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, D.C.

Dear Mr. Bayne:

I have enclosed eight (8) originals of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

*New Number*  
This document is a Security Agreement and Assignment, a primary document, dated as of September 16, 1985.

Please cross-index this Security Agreement under Recordation No. ~~14790~~ 14724

The names and addresses of the parties to this document are as follows:

Debtor: CIS Rail Corporation  
909 Montgomery Street  
San Francisco, California 94133

Secured Party: Liberty Life Insurance Company  
2000 Wade Hampton Boulevard  
Greenville, South Carolina 29615

*Consolidated*  
*Wade*

A description of the equipment covered by the document follows:

One (1) General Motors Corporation (Electromotive Division) Model SD-40-2, 3000 horsepower locomotive constructed pursuant to Specification 8087, and rebuilt pursuant to the Locomotive Manufacturing Agreement dated as of December 20, 1984, between Missouri-Kansas-Texas Railroad Company ("MKT") and CIS Rail Corporation, bearing MKT's road number 637.

A short summary of the document to appear in the index follows:

Covers one locomotive: 637.

A total fee of \$20 is enclosed, \$10 of which is to cover the filing fee for this document and \$10 to cover the cross-indexing under Recordation No. ~~14249~~.14724

Please return to bearer the stamped counterparts not needed by the Commission for its files.

Very truly yours,



Clifford R. Ennico

*New Number*

14790  
SEP.19 1985 -10 55 AM  
INTERSTATE COMMERCE COMMISSION

**SECURITY AGREEMENT AND ASSIGNMENT**

SECURITY AGREEMENT and ASSIGNMENT (this "Agreement") dated as of September 16, 1985, between CIS RAIL CORPORATION, a California corporation having its principal office at 909 Montgomery Street, San Francisco, California 94133 (the "Debtor") and LIBERTY LIFE INSURANCE COMPANY, a corporation, with an office at 2000 Wade Hampton Boulevard, Greenville, South Carolina 29615 (the "Secured Party").

WHEREAS, the Secured Party is making a loan to the Debtor in the principal sum of \$713,946.55 (the "Loan") evidenced by the Debtor's Non-recourse Promissory Note (the "Note") dated September 16, 1985; and

WHEREAS, the Note and all principal thereof and interest thereon and all additional amounts and other sums at any time due and owing from or required to be paid by the Debtor under the terms of the Note and this Agreement are hereinafter referred to as the "Indebtedness Hereby Secured"; and

WHEREAS, all of the requirements of law have been fully complied with and all other acts and things necessary to make this Agreement a valid, binding and legal instrument for the security of the Note have been done and performed;

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties hereto agree as follows:

**SECTION 1. SECURITY INTEREST**

In consideration of the Loan and other good and valuable consideration, receipt and sufficiency whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Note and other Indebtedness Hereby Secured and the prompt performance and observance of all the covenants and conditions contained in the Note and in this Agreement, the Debtor does hereby mortgage, assign, pledge and grant a security interest in, and hypothecate unto the Secured Party, its successors and assigns, the following described properties, rights, interest and privileges (all of which properties are hereinafter collectively referred to as the "Collateral"):

**DIVISION I**

The SD-40-2, three thousand horsepower locomotive described in Schedule A attached hereto and made a part hereof (the "Equipment"), being the Equipment leased under that certain Lease of Railroad Equipment dated as of May 31, 1985, between the Debtor,

as Lessor, and the Missouri-Kansas-Texas Railroad Company, a Delaware corporation, as Lessee (the "Lessee"), together with all accessories, attachments and appurtenances appertaining or attached to the Equipment, whether now owned or hereafter acquired, and all substitutions, renewals and replacements of, and improvements to, any and all of the Equipment together with all the rents, proceeds, issues, income, profits and avails thereof or therefrom.

## DIVISION II

All right, title and interest of the Debtor, as Lessor (but not the obligations of the Debtor), in, under and to the Lease and all rents and other sums due and to become due thereunder, including any and all extensions or renewals thereof insofar as the same cover or relate to the Equipment, but excluding all right, title and interest of the Debtor, in, under and to Sections 3(1)(b), 6 and 21 of the Lease and all sums due and to become due to the Lessor for its own account thereunder (the right, title and interest of the Debtor in, under and to said Sections being hereinafter referred to as the "Excepted Rights in Collateral"); it being the intent and purpose hereof that the assignment and transfer to the Secured Party of said rent and other sums due and to become due under the Lease (except with respect to the Excepted Rights in Collateral) shall be effective and operative immediately and shall continue in full force and effect and the Secured Party shall have the right to collect and receive said rents and other sums for application in accordance with the provisions of Section 4 hereof at all times during the period from and after the date of this Agreement until the Indebtedness Hereby Secured has been fully paid and discharged.

SUBJECT, HOWEVER, to the right and interest of the Lessee under the Lease so long as there does not exist any Event of Default under the Lease or any event which, with notice or passage of time, or both, would constitute an Event of Default under the Lease and so long as the Secured Party shall have continued to receive all rent and other sums payable pursuant to the Lease.

## SECTION 2. COVENANTS, REPRESENTATIONS AND WARRANTIES

The Debtor covenants, represents, warrants and agrees as follows:

2.1 Warranty of Title. The Debtor has good title to the Collateral, free and clear in each instance of all security interests, liens, claims and encumbrances whatsoever, subject only to a security interest granted to Bank of the West, (the "Bank"), in connection with its acquisition of the Equipment (such security interest to be released by the Bank concurrently

with the execution and delivery of the Note). The Debtor has full power and authority to grant a security interest in the Collateral to the Secured Party and hereby warrants said title to the Collateral against all claims and demands whatsoever (excepting only, in the case of the Equipment, the right and interest of the Lessee under the Lease so long as there does not exist any Event of Default under the Lease or any event which, with notice or passage of time, or both, would constitute an Event of Default under the Lease and so long as the Secured Party shall have continued to receive all rent and other sums payable pursuant to the Lease).

2.2 Further Assurances. The Debtor will, upon written direction from the Secured Party and at the Debtor's own expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances reasonably necessary or proper for the better assuring, conveying, assigning and confirming unto the Secured Party a first prior perfected security interest in all of the Collateral, including without limitation any document, instrument or certificate reasonably requested by the Secured Party to continue its first prior perfected security interest in the Collateral hereunder in the event Debtor or Secured Party obtains knowledge that the Equipment is being used outside the continental United States.

2.3 Recordation and Filing. The Debtor will, at the Debtor's own expense, cause this Agreement and all security agreements supplemental hereto, the Lease and all amendments or supplements thereto, and all Uniform Commercial Code (the "Code") financing and continuation statements and similar notices required by applicable law, at all times to be kept, recorded and filed in such manner and in such places within the United States as may be reasonably directed by the Secured Party in order to preserve and protect the rights of the Secured Party hereunder.

2.4 Modifications of the Lease. The Debtor will not, without the prior written consent of the Secured Party:

(a) Declare a default or exercise the remedies of the Lessor under, or terminate, modify or accept a surrender of or offer or permit modification, surrender or termination of, the Lease or consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the leasehold estate created by the Lease or any part thereof (except as permitted by Section 2.7 hereof); or

(b) Receive or collect or permit the receipt or collection of any rental or other payment under the Lease prior to the date for payment thereof provided for by the Lease or extend any time for payment or grant any waiver or consent under the Lease.

2.5 Power of Attorney in Respect of the Lease. The Debtor does hereby irrevocably constitute and appoint the Secured Party its true and lawful attorney-in-fact with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rents, income and other sums which are assigned under Division II of Section 1 and all proceeds of Equipment assigned under Division I of Section 1 of this Agreement with full power to settle, adjust or compromise any claim thereunder as fully as the Debtor could itself do, and to endorse the name of the Debtor on all checks, notes, drafts and other evidence of payment given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Debtor, or otherwise, which the Secured Party may deem necessary or appropriate to collect any and all sums which may be or become due or payable under the Lease, or which may be necessary or appropriate to protect and preserve the right, title and interest of the Secured Party in and to such rents and other sums and the security interest intended to be created hereby.

2.6 Notice of Default. The Debtor will give the Secured Party prompt notice of any event or condition constituting an Event of Default hereunder or under the Lease of which the Debtor has knowledge.

2.7 Retention of Title. The Debtor shall not subject the Equipment or any other Collateral to any lien or encumbrance of any nature or kind whatsoever, except as provided herein, without the prior written consent of the Secured Party, and the Debtor shall not convey title to the Collateral or any item thereof to any person, provided that the Debtor may transfer its interest in the Equipment and/or the other Collateral (and may subject the Equipment or any other Collateral to liens or encumbrances in connection therewith), directly or indirectly, to any corporation or partnership organized under the laws of the United States of America or any state thereof or any citizen(s) of and residing in the United States of America (a "Transferee") so long as (i) any such transfers are made expressly subject and subordinate to the prior interest of the Secured Party hereunder, (ii) such Transferee delivers to the Secured Party a certificate in substantially the form of Exhibit A attached hereto (the "Transferee Certificate"), and (iii) counsel for each non-individual Transferee delivers to the Secured Party its opinion to the effect that the Transferee Certificate has been duly authorized, executed and delivered and is a legal, valid and binding obligation of the Transferee, enforceable against such Transferee in accordance with its terms.

2.8 Totality of Documents. The Debtor represents and warrants that the Lease has been duly executed and delivered by each party thereto, constitutes a legal, valid and binding obligation of each party thereto in accordance with its terms, the Equipment has been delivered to and accepted by the Lessee and the Lease represents the total and complete agreement between Debtor and the Lessee with respect to the Collateral and the Debtor has entered into no other agreements, whether written or oral, with the Lessee, in respect of the Collateral.

2.9 Further Covenants, Representations and Warranties. The Debtor covenants, represents and warrants that:

- (i) It is a duly organized and validly existing corporation in good standing under the laws of the State of California, qualified to do business in all jurisdictions in which qualification is required in order for it to carry out the transactions contemplated by this Agreement; and it is empowered and authorized to own its properties and carry on its business as now or hereafter conducted.
- (ii) The execution and delivery of this Agreement are within its corporate powers, have been authorized by proper corporate proceedings and will not contravene any provision of law, governmental rule or regulation, judgment or order applicable to the Debtor, or of its charter or by-laws, and do not and will not contravene any provisions of or constitute a default under the provisions of any indenture, mortgage, contract or other agreement or instrument binding upon it; and this Agreement is a legal, valid and binding obligation of the Debtor which is enforceable against the Debtor in accordance with its terms.
- (iii) No giving of notice to, registration with or taking of any action in respect of or by any federal, state or local governmental body is required and no governmental authorization or approvals are required for the execution and delivery of this Agreement or for the validity and enforceability hereof or for the grant of the security interest hereunder on the terms and conditions herein provided, or, if any such actions or approvals are so required they have been so given and/or obtained, and, if any such approvals are hereafter required, they will be promptly obtained.

- (iv) No litigation or administrative proceedings are pending or, to the best knowledge of the Debtor, threatened against or affecting the Debtor in any court of before any governmental body, the adverse determination of which would affect the validity of this Agreement, the rights of the Secured Party of its successors hereunder, or the ability of the Debtor to perform its obligations under this Agreement.
- (v) The Debtor will not, without the Secured Party's prior written consent, amend, modify, or issue any consent or waiver of, any provision of the Lease or extend the time of any payment thereunder, or rescind, cancel or accept the surrender of the Lease.

### SECTION 3. POSSESSION AND USE OF EQUIPMENT

While the Debtor is not in default hereunder, it shall be permitted to remain in full possession, enjoyment and control of the Equipment and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; provided, always, that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Agreement. It is expressly understood that the use and possession of the Equipment by the Lessee under and subject to the Lease shall not constitute a violation of this Section 3.

### SECTION 4. APPLICATION OF INSURANCE AND CERTAIN OTHER MONIES RECEIVED BY THE SECURED PARTY

4.1 Application of Rents and Other Payments by Lessee. As more fully set forth in Division II of Section 1 of this Agreement, the Debtor has granted to the Secured Party a security interest in all rents and other sums due and to become due in respect of the Equipment described in Division I of Section 1 of this Agreement as security for the Note. The rents and other sums received by the Secured Party pursuant to this Agreement or any supplement thereto shall be held by the Secured Party as part of the Collateral and, so long as no Event of Default referred to in Section 5 hereof has occurred and is continuing, or, which with the lapse of time or the giving of notice, or both, would constitute an Event of Default as so defined, all such rents and other sums shall be paid and applied as follows:

(a) Rents. The amounts from time to time received by the Secured Party which constitute payment of rent under the Lease shall be applied first, to the payment of all amounts of interest and then to principal then due and payable on



the Note; second, to all other Indebtedness Hereby Secured; and third, any balance of such payment of rentals remaining shall be paid by the Secured Party to the Debtor or to whomsoever may be lawfully entitled thereto.

(b) Casualty Value Payments or Indemnity Payments.

The amounts received by the Secured Party which constitute settlement by the Lessee of the Casualty Value (as defined in the Lease) relating to the Equipment shall be paid and applied to prepay the Loan and all other Indebtedness Hereby Secured. So long as the Debtor is not in default hereunder, the amounts received by the Secured Party which constitute indemnity payments under the Lease will be paid by the Secured Party to the Debtor, provided, however, that any indemnity payments covering any indemnity to the Secured Party shall be retained by the Secured Party.

4.2 Notwithstanding anything else contained in this Section 4, if an Event of Default referred to in Section 5 hereof has occurred and is continuing, all amounts received by the Secured Party under this Agreement shall be applied in the manner provided for in Section 5 with respect to proceeds and avails of the Collateral. Except as expressly permitted by the terms of this Agreement, the Debtor shall have no right to prepay all or any portion of the Indebtedness Hereby Secured (including without limitation the Loan).

**SECTION 5. DEFAULTS AND OTHER PROVISIONS**

5.1 The term "Event of Default" for all purposes of this Security Agreement shall mean one or more of the following:

(a) Default in payment of an installment of the principal of, premium, if any, or interest on, the Note when and as the same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment or by acceleration or otherwise;

(b) An Event of Default under the Lease shall have occurred and be continuing under the Lease, except in respect of default in payment or performance with regard to any Excepted Rights in Collateral (an "Excepted Rights Default"), provided, that if an Excepted Rights Default shall have occurred and be continuing, the Debtor shall give the Secured Party prompt notice of the occurrence of such Excepted Rights Default and further provided, that if, in the reasonable judgment of the Debtor communicated to the Secured Party in writing, the Debtor determines that it must exercise any of its rights and remedies under the Lease against any of the Collateral, such Excepted Rights Default

shall also be deemed an Event of Default hereunder;

(c) Default on the part of the Debtor in the due observance or performance of any covenant or agreement (other than pursuant to subsection (a) or (b) hereof) to be observed or performed by the Debtor under this Security Agreement, and such default shall continue unremedied for thirty days after written notice from the Secured Party to the Debtor specifying the default and demanding the same to be remedied;

(d) Any representation or warranty on the part of the Debtor made herein or in any report, certificate, financial or other statement furnished in connection with this Security Agreement or the Lease, or the transactions contemplated therein, shall prove to have been false or misleading in any material respect when made;

(e) Any claim, lien or charge shall be asserted against or levied or imposed upon the Equipment which is prior to or on a parity with the security interest granted hereunder; and such claim, lien or charge shall not be discharged or removed within 60 calendar days after written notice from the Secured Party to the Debtor and the Lessee demanding the discharge or removal thereof;

(f) The Debtor shall (1) be generally not paying its debts as they become due, (2) file, or consent to the filing against it of a petition for relief under any bankruptcy or insolvency laws, (3) make an assignment for the benefit of creditors, (4) consent to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other official with similar powers over the Debtor or a substantial part of its property, or (5) take corporate action for the purpose of any of the foregoing; or

(g) A court having jurisdiction over the Debtor or its property shall enter a decree or order in respect of the Debtor or such property in an involuntary case under any bankruptcy or insolvency law, or shall appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other official with similar powers over the Debtor or any such property, or shall order the winding-up or liquidation of the affairs of the Debtor, and such order or decree shall continue in effect for a period of 60 consecutive days.

5.2 When any such Event of Default shall occur and be continuing, the Indebtedness Hereby Secured shall, at the option of the Secured Party, become immediately due and payable and the Secured Party shall have the rights, options and remedies of a secured party under the Code and the Debtor shall have the

rights, options and duties of a debtor under the Code (regardless of whether the Code or a law similar thereto has been enacted in the jurisdiction wherein the rights or remedies are asserted), and without limiting the foregoing the Secured Party may exercise any one or more or all, and in any order, the remedies set forth in the Lease.

5.3 Any sale by the Secured Party whether under any power of sale hereby given or by virtue of judicial proceedings shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Debtor, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Debtor, its successors or assigns (subject, however, to the then existing rights, if any, of the Lessee under the Lease and to the rights and interest of the Debtor, its successors and assigns, in the proceeds of such sale which are in excess of the amount required to satisfy in full the Indebtedness Hereby Secured).

5.4 The proceeds of any sale of the Collateral or any part thereof, and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) To the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and the reasonable compensation of the agents, attorneys and the counsel of the Secured Party and of all reasonable expenses, liabilities and advances incurred or made hereunder by the Secured Party, or the holder or holders of the Note, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

(b) To the payment to the holder or holders of the Note of the amount then owing or unpaid on the Note for principal and interest, first to interest and then to principal; and in case any such proceeds shall be insufficient to pay the whole amount so due upon the Note then to the payment of such principal and/or interest then owing on the Note as the Secured Party or the holders of such Note shall elect;

(c) To the payment of any other Indebtedness Hereby Secured; and

(d) To the payment to the Debtor or to whomsoever may be lawfully entitled thereto of all sums remaining.

5.5 No delay or omission of the Secured Party, its

successors or assigns, or of any holder of the Note, to exercise any right or power arising from any default on the part of the Debtor shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Secured Party or any holder or holders of the Note of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom, except as may be otherwise provided herein.

#### SECTION 6. LIMITATIONS OF LIABILITY

Anything in this Agreement, the Note, the Lease, any certificate, opinion or documents of any nature whatsoever to the contrary notwithstanding, neither the Secured Party nor its successors or assigns, nor any holder or holders of the Note shall have any claim, remedy or right to proceed (at law or in equity) against the Debtor for the payment of any deficiency or any other sum owing on account of the Indebtedness Hereby Secured or for the payment of any liability of any nature whatsoever (except that the Secured Party shall have full recourse against the Debtor and the Debtor shall have personal liability for breaches of the Debtor's representations, warranties and covenants contained herein), from any source other than the Collateral, including the sums due and to become due under the Lease; and the Secured Party by acceptance of the Note waives and releases any liability of the Debtor for and on account of the Indebtedness Hereby Secured or such liability, except as provided above, and the Secured Party, its successors and assigns and the holders of the Note agree to look solely to the Collateral, including without limitation the sums due and to become due under the Lease, for the payment of the Indebtedness Hereby Secured or the satisfaction of such liability provided, however, nothing herein contained shall limit, restrict, or impair the rights of the holders of the Note to accelerate the maturity of the Note upon a default under this Agreement; to bring suit and obtain a judgment against the Debtor on the Note (provided the satisfaction thereof shall be limited to the Collateral, including without limitation the sums due and to become due under the Lease) or to exercise all rights and remedies provided under this Agreement or otherwise realize upon the Collateral, including without limitation the sums due or to become due under the Lease, including without limitation the right to proceed against the Lessee under the Lease. Notwithstanding anything to the contrary herein, the Secured Party shall have full recourse against the Debtor and the Debtor shall be personally liable for any breaches of the Debtor's representations, warranties and covenants contained herein.

## SECTION 7. MISCELLANEOUS

7.1 Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Agreement contained by or on behalf of the Debtor, or by or on behalf of the Secured Party, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

7.2 Release. The Secured Party shall release this Agreement and the lien hereof by proper instrument or instruments at such time as all Indebtedness Hereby Secured has been fully paid and satisfied, and the Secured Party shall at that time redeliver to the Debtor the executed original copy of the Lease delivered to the Secured Party concurrently with the execution and delivery of this Agreement.

7.3 Notices. All notices to be made hereunder shall be in writing and shall be deemed to have been duly given if sent by telex, if delivered personally or four days after being deposited in the United States registered or certified mail, first class postage prepaid, and in each case addressed as follows:

If to Debtor

CIS Rail Corporation  
909 Montgomery Street  
San Francisco, California 94133

Attention: President

If to Secured Party

Liberty Life Insurance Company  
P. O. Box 789  
Greenville, South Carolina 29602

Attention: Securities Department

Either party hereto may change the address to which notice to such party shall be sent by giving notice of such change to the other party to this Agreement as provided herein.

7.4 Applicable Law. This Agreement shall be interpreted and enforced between the parties in accordance with the laws of the State of California without regard to principles of conflict of laws; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, as amended, and such additional rights arising out of the filing,

recording or depositing hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Security Agreement shall be filed, recorded or deposited. This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, but all counterparts shall together constitute a single instrument.

7.5 Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Security Agreement shall not render any other provision herein contained unenforceable or invalid.

7.6 Amendments. This Security Agreement may, from time to time and at any time, be amended or supplemented by an instrument or instruments in writing executed by the parties hereto.

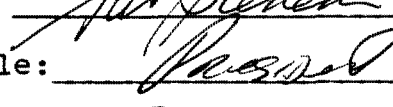
7.7 Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Security Agreement nor shall they affect its meaning, construction or effect.

7.8 Effective Date. Although this Security Agreement is dated as of the date first above written for convenience, the actual dates of execution hereof by the Debtor and the Secured Party are respectively the dates set forth in the acknowledgements hereto, and this Security Agreement shall be effective on the latest of such dates.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed all as of the day and year first above written.

CIS RAIL CORPORATION

By: 

Title: 

Attest: 

LIBERTY LIFE INSURANCE COMPANY

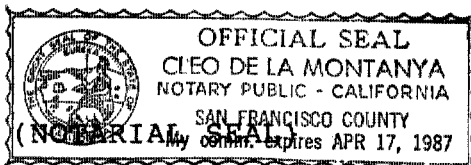
By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

STATE OF CALIFORNIA            )  
                                      :        SS.:  
COUNTY OF SAN FRANCISCO    )

On the 17 day of September, 1985, before me personally appear STEPHEN C. BIENEHMAN, who being by me duly sworn, did say that he/she is an Authorized Officer of CIS RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its by-laws and by resolution of its board of directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.



*Clara L. H. [Signature]*  
Notary Public

My commission expires: 4-17-87

STATE OF SOUTH CAROLINA    )  
                                      :        SS.:  
COUNTY OF \_\_\_\_\_        )

On the \_\_\_\_\_ day of September, 1985, before me personally appeared \_\_\_\_\_, who, being by me duly sworn, did say that he/she is an Authorized Officer of LIBERTY LIFE INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its by-laws and by resolution of its board of directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

(NOTARIAL SEAL)                      My commission expires: \_\_\_\_\_

**Schedule A**

**EQUIPMENT DESCRIPTION**

**Equipment described as follows:**

One (1) General Motors Corporation (Electromotive Division) Model SD-40-2, 3,000 horsepower locomotive constructed pursuant to Specification 8087, and rebuilt pursuant to the Locomotive Manufacturing Agreement dated as of December 20, 1984, between the Debtor and the Lessee, bearing the Lessee's road number 637.



EXHIBIT A  
CERTIFICATE OF TRANSFEREE

As the Transferee referred to in the Security Agreement and Assignment, dated as of September 16, 1985 (the "Security Agreement"), between CIS Rail Corporation (the "Lessor") and Liberty Life Insurance Company (the "Lender"), and the Assignment of Lease and Agreement, dated as of September 16, 1985 (the "Assignment"), from the Lessor to the Lender, the Transferee hereby represents, warrants, agrees and covenants to such Lender as follows (except as set forth herein, the terms used in this Certificate shall have the same meaning as set forth in the Security Agreement):

(a) The Transferee is a corporation [partnership] duly organized and existing [in good standing] under the laws of the State of \_\_\_\_\_, and has full power and authority to enter into and perform the Transferee's obligations under this Certificate of Transferee, [list purchase and resale documents] and the agreements, certificates and instruments contemplated by all of the foregoing (collectively, the "Transfer Documents").

(b) The Transfer Documents have been duly authorized, executed and delivered by the Transferee and constitute legal, valid, and binding agreements and obligations of the Transferee, enforceable in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally or by legal or equitable doctrines

which may limit the availability of specific performance under specific circumstances.

(c) The performance by the Transferee of its obligations under the Transfer Documents will not subject the Collateral to any lien, charge, or encumbrance (other than the liens and security interests provided or permitted in the Security Agreement and the Assignment or [list applicable Transfer Documents]) under any indenture, mortgage, contract, or other instrument to which the Transferee is a party or by which the Transferee is bound.

(d) In consideration of the Lender's having made the Loan to the Lessor pursuant to the Security Agreement, the Transferee hereby (i) acknowledges the first security interest of the Lender in the Collateral described in the Security Agreement, (ii) waives any objection to the validity or enforceability of the Security Agreement or the Assignment, (iii) agrees that its right, title, and interest (including security interests) in and to the Equipment, the Lease and any other Collateral is and shall be expressly subject and subordinate to the right, title, and interest of the Lender therein, (iv) grants to the Lender a security interest in all of the Transferee's rights in the Collateral, (v) agrees that upon the occurrence of an event of default under Section 5.1 of the Security Agreement, the Lender may exercise and enforce the rights and remedies set forth therein against the right, title and interest of the Transferee in and to such Collateral, (vi) agrees that the Transferee has

not sold and shall not sell, assign, convey, transfer, exchange, create a security interest in or otherwise dispose of any of the Equipment or take any other action with respect thereto (except for any sale or transfer by the Transferee to [NAME OF OWNER] pursuant to the Transfer Documents) without the prior written consent of the Lender, (vii) agrees that it will not amend, waive, discharge or terminate any term or provision of the Lease or give any consent thereunder, without the prior written consent of the Lender, (viii) agrees that it will not take any action to disturb the quiet use, possession and enjoyment of the Equipment by the Lessee under the Lease and by any other lessee or sublessee thereof not in default under its lease obligations under any lease or sublease permitted by the Lease, (ix) agrees that it will not do any act or thing which would cause a breach or default by the Lessor under any lease or sublease permitted by the Lease, (x) agrees that any provision of the Transfer Documents inconsistent with this Certificate shall be null and void as against the Lender, or with respect to the Collateral (until the security interest of the Lender shall have terminated), and (xi) agrees that upon reasonable request of the Lender, it will promptly and at its own expense execute and deliver any and all such further instruments and documents as the Lender may reasonably deem desirable to better assure and confirm to the Lender the benefits, powers, and remedies of this Certificate.

[NAME OF TRANSFeree]

By \_\_\_\_\_

Title \_\_\_\_\_

## SECURITY AGREEMENT AND ASSIGNMENT

SECURITY AGREEMENT and ASSIGNMENT (this "Agreement") dated as of September 16, 1985, between CIS RAIL CORPORATION, a California corporation having its principal office at 909 Montgomery Street, San Francisco, California 94133 (the "Debtor") and LIBERTY LIFE INSURANCE COMPANY, a corporation, with an office at 2000 Wade Hampton Boulevard, Greenville, South Carolina 29615 (the "Secured Party").

WHEREAS, the Secured Party is making a loan to the Debtor in the principal sum of \$713,946.55 (the "Loan") evidenced by the Debtor's Non-recourse Promissory Note (the "Note") dated September 16, 1985; and

WHEREAS, the Note and all principal thereof and interest thereon and all additional amounts and other sums at any time due and owing from or required to be paid by the Debtor under the terms of the Note and this Agreement are hereinafter referred to as the "Indebtedness Hereby Secured"; and

WHEREAS, all of the requirements of law have been fully complied with and all other acts and things necessary to make this Agreement a valid, binding and legal instrument for the security of the Note have been done and performed;

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties hereto agree as follows:

### SECTION 1. SECURITY INTEREST

In consideration of the Loan and other good and valuable consideration, receipt and sufficiency whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Note and other Indebtedness Hereby Secured and the prompt performance and observance of all the covenants and conditions contained in the Note and in this Agreement, the Debtor does hereby mortgage, assign, pledge and grant a security interest in, and hypothecate unto the Secured Party, its successors and assigns, the following described properties, rights, interest and privileges (all of which properties are hereinafter collectively referred to as the "Collateral"):

#### DIVISION I

The SD-40-2, three thousand horsepower locomotive described in Schedule A attached hereto and made a part hereof (the "Equipment"), being the Equipment leased under that certain Lease of Railroad Equipment dated as of May 31, 1985, between the Debtor,

as Lessor, and the Missouri-Kansas-Texas Railroad Company, a Delaware corporation, as Lessee (the "Lessee"), together with all accessories, attachments and appurtenances appertaining or attached to the Equipment, whether now owned or hereafter acquired, and all substitutions, renewals and replacements of, and improvements to, any and all of the Equipment together with all the rents, proceeds, issues, income, profits and avails thereof or therefrom.

## DIVISION II

All right, title and interest of the Debtor, as Lessor (but not the obligations of the Debtor), in, under and to the Lease and all rents and other sums due and to become due thereunder, including any and all extensions or renewals thereof insofar as the same cover or relate to the Equipment, but excluding all right, title and interest of the Debtor, in, under and to Sections 3(1)(b), 6 and 21 of the Lease and all sums due and to become due to the Lessor for its own account thereunder (the right, title and interest of the Debtor in, under and to said Sections being hereinafter referred to as the "Excepted Rights in Collateral"); it being the intent and purpose hereof that the assignment and transfer to the Secured Party of said rent and other sums due and to become due under the Lease (except with respect to the Excepted Rights in Collateral) shall be effective and operative immediately and shall continue in full force and effect and the Secured Party shall have the right to collect and receive said rents and other sums for application in accordance with the provisions of Section 4 hereof at all times during the period from and after the date of this Agreement until the Indebtedness Hereby Secured has been fully paid and discharged.

SUBJECT, HOWEVER, to the right and interest of the Lessee under the Lease so long as there does not exist any Event of Default under the Lease or any event which, with notice or passage of time, or both, would constitute an Event of Default under the Lease and so long as the Secured Party shall have continued to receive all rent and other sums payable pursuant to the Lease.

## SECTION 2. COVENANTS, REPRESENTATIONS AND WARRANTIES

The Debtor covenants, represents, warrants and agrees as follows:

2.1 Warranty of Title. The Debtor has good title to the Collateral, free and clear in each instance of all security interests, liens, claims and encumbrances whatsoever, subject only to a security interest granted to Bank of the West, (the "Bank"), in connection with its acquisition of the Equipment (such security interest to be released by the Bank concurrently

with the execution and delivery of the Note). The Debtor has full power and authority to grant a security interest in the Collateral to the Secured Party and hereby warrants said title to the Collateral against all claims and demands whatsoever (excepting only, in the case of the Equipment, the right and interest of the Lessee under the Lease so long as there does not exist any Event of Default under the Lease or any event which, with notice or passage of time, or both, would constitute an Event of Default under the Lease and so long as the Secured Party shall have continued to receive all rent and other sums payable pursuant to the Lease).

2.2 Further Assurances. The Debtor will, upon written direction from the Secured Party and at the Debtor's own expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances reasonably necessary or proper for the better assuring, conveying, assigning and confirming unto the Secured Party a first prior perfected security interest in all of the Collateral, including without limitation any document, instrument or certificate reasonably requested by the Secured Party to continue its first prior perfected security interest in the Collateral hereunder in the event Debtor or Secured Party obtains knowledge that the Equipment is being used outside the continental United States.

2.3 Recordation and Filing. The Debtor will, at the Debtor's own expense, cause this Agreement and all security agreements supplemental hereto, the Lease and all amendments or supplements thereto, and all Uniform Commercial Code (the "Code") financing and continuation statements and similar notices required by applicable law, at all times to be kept, recorded and filed in such manner and in such places within the United States as may be reasonably directed by the Secured Party in order to preserve and protect the rights of the Secured Party hereunder.

2.4 Modifications of the Lease. The Debtor will not, without the prior written consent of the Secured Party:

(a) Declare a default or exercise the remedies of the Lessor under, or terminate, modify or accept a surrender of or offer or permit modification, surrender or termination of, the Lease or consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the leasehold estate created by the Lease or any part thereof (except as permitted by Section 2.7 hereof); or

(b) Receive or collect or permit the receipt or collection of any rental or other payment under the Lease prior to the date for payment thereof provided for by the Lease or extend any time for payment or grant any waiver or consent under the Lease.

2.5 Power of Attorney in Respect of the Lease. The Debtor does hereby irrevocably constitute and appoint the Secured Party its true and lawful attorney-in-fact with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rents, income and other sums which are assigned under Division II of Section 1 and all proceeds of Equipment assigned under Division I of Section 1 of this Agreement with full power to settle, adjust or compromise any claim thereunder as fully as the Debtor could itself do, and to endorse the name of the Debtor on all checks, notes, drafts and other evidence of payment given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Debtor, or otherwise, which the Secured Party may deem necessary or appropriate to collect any and all sums which may be or become due or payable under the Lease, or which may be necessary or appropriate to protect and preserve the right, title and interest of the Secured Party in and to such rents and other sums and the security interest intended to be created hereby.

2.6 Notice of Default. The Debtor will give the Secured Party prompt notice of any event or condition constituting an Event of Default hereunder or under the Lease of which the Debtor has knowledge.

2.7 Retention of Title. The Debtor shall not subject the Equipment or any other Collateral to any lien or encumbrance of any nature or kind whatsoever, except as provided herein, without the prior written consent of the Secured Party, and the Debtor shall not convey title to the Collateral or any item thereof to any person, provided that the Debtor may transfer its interest in the Equipment and/or the other Collateral (and may subject the Equipment or any other Collateral to liens or encumbrances in connection therewith), directly or indirectly, to any corporation or partnership organized under the laws of the United States of America or any state thereof or any citizen(s) of and residing in the United States of America (a "Transferee") so long as (i) any such transfers are made expressly subject and subordinate to the prior interest of the Secured Party hereunder, (ii) such Transferee delivers to the Secured Party a certificate in substantially the form of Exhibit A attached hereto (the "Transferee Certificate"), and (iii) counsel for each non-individual Transferee delivers to the Secured Party its opinion to the effect that the Transferee Certificate has been duly authorized, executed and delivered and is a legal, valid and binding obligation of the Transferee, enforceable against such Transferee in accordance with its terms.

2.8 Totality of Documents. The Debtor represents and warrants that the Lease has been duly executed and delivered by each party thereto, constitutes a legal, valid and binding obligation of each party thereto in accordance with its terms, the Equipment has been delivered to and accepted by the Lessee and the Lease represents the total and complete agreement between Debtor and the Lessee with respect to the Collateral and the Debtor has entered into no other agreements, whether written or oral, with the Lessee, in respect of the Collateral.

2.9 Further Covenants, Representations and Warranties. The Debtor covenants, represents and warrants that:

- (i) It is a duly organized and validly existing corporation in good standing under the laws of the State of California, qualified to do business in all jurisdictions in which qualification is required in order for it to carry out the transactions contemplated by this Agreement; and it is empowered and authorized to own its properties and carry on its business as now or hereafter conducted.
- (ii) The execution and delivery of this Agreement are within its corporate powers, have been authorized by proper corporate proceedings and will not contravene any provision of law, governmental rule or regulation, judgment or order applicable to the Debtor, or of its charter or by-laws, and do not and will not contravene any provisions of or constitute a default under the provisions of any indenture, mortgage, contract or other agreement or instrument binding upon it; and this Agreement is a legal, valid and binding obligation of the Debtor which is enforceable against the Debtor in accordance with its terms.
- (iii) No giving of notice to, registration with or taking of any action in respect of or by any federal, state or local governmental body is required and no governmental authorization or approvals are required for the execution and delivery of this Agreement or for the validity and enforceability hereof or for the grant of the security interest hereunder on the terms and conditions herein provided, or, if any such actions or approvals are so required they have been so given and/or obtained, and, if any such approvals are hereafter required, they will be promptly obtained.



- (iv) No litigation or administrative proceedings are pending or, to the best knowledge of the Debtor, threatened against or affecting the Debtor in any court of before any governmental body, the adverse determination of which would affect the validity of this Agreement, the rights of the Secured Party or its successors hereunder, or the ability of the Debtor to perform its obligations under this Agreement.
- (v) The Debtor will not, without the Secured Party's prior written consent, amend, modify, or issue any consent or waiver of, any provision of the Lease or extend the time of any payment thereunder, or rescind, cancel or accept the surrender of the Lease.

### SECTION 3. POSSESSION AND USE OF EQUIPMENT

While the Debtor is not in default hereunder, it shall be permitted to remain in full possession, enjoyment and control of the Equipment and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; provided, always, that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Agreement. It is expressly understood that the use and possession of the Equipment by the Lessee under and subject to the Lease shall not constitute a violation of this Section 3.

### SECTION 4. APPLICATION OF INSURANCE AND CERTAIN OTHER MONIES RECEIVED BY THE SECURED PARTY

4.1 Application of Rents and Other Payments by Lessee. As more fully set forth in Division II of Section 1 of this Agreement, the Debtor has granted to the Secured Party a security interest in all rents and other sums due and to become due in respect of the Equipment described in Division I of Section 1 of this Agreement as security for the Note. The rents and other sums received by the Secured Party pursuant to this Agreement or any supplement thereto shall be held by the Secured Party as part of the Collateral and, so long as no Event of Default referred to in Section 5 hereof has occurred and is continuing, or, which with the lapse of time or the giving of notice, or both, would constitute an Event of Default as so defined, all such rents and other sums shall be paid and applied as follows:

- (a) Rents. The amounts from time to time received by the Secured Party which constitute payment of rent under the Lease shall be applied first, to the payment of all amounts of interest and then to principal then due and payable on

the Note; second, to all other Indebtedness Hereby Secured; and third, any balance of such payment of rentals remaining shall be paid by the Secured Party to the Debtor or to whomsoever may be lawfully entitled thereto.

(b) Casualty Value Payments or Indemnity Payments.

The amounts received by the Secured Party which constitute settlement by the Lessee of the Casualty Value (as defined in the Lease) relating to the Equipment shall be paid and applied to prepay the Loan and all other Indebtedness Hereby Secured. So long as the Debtor is not in default hereunder, the amounts received by the Secured Party which constitute indemnity payments under the Lease will be paid by the Secured Party to the Debtor, provided, however, that any indemnity payments covering any indemnity to the Secured Party shall be retained by the Secured Party.

4.2 Notwithstanding anything else contained in this Section 4, if an Event of Default referred to in Section 5 hereof has occurred and is continuing, all amounts received by the Secured Party under this Agreement shall be applied in the manner provided for in Section 5 with respect to proceeds and avails of the Collateral. Except as expressly permitted by the terms of this Agreement, the Debtor shall have no right to prepay all or any portion of the Indebtedness Hereby Secured (including without limitation the Loan).

SECTION 5. DEFAULTS AND OTHER PROVISIONS

5.1 The term "Event of Default" for all purposes of this Security Agreement shall mean one or more of the following:

(a) Default in payment of an installment of the principal of, premium, if any, or interest on, the Note when and as the same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment or by acceleration or otherwise;

(b) An Event of Default under the Lease shall have occurred and be continuing under the Lease, except in respect of default in payment or performance with regard to any Excepted Rights in Collateral (an "Excepted Rights Default"), provided, that if an Excepted Rights Default shall have occurred and be continuing, the Debtor shall give the Secured Party prompt notice of the occurrence of such Excepted Rights Default and further provided, that if, in the reasonable judgment of the Debtor communicated to the Secured Party in writing, the Debtor determines that it must exercise any of its rights and remedies under the Lease against any of the Collateral, such Excepted Rights Default

shall also be deemed an Event of Default hereunder;

(c) Default on the part of the Debtor in the due observance or performance of any covenant or agreement (other than pursuant to subsection (a) or (b) hereof) to be observed or performed by the Debtor under this Security Agreement, and such default shall continue unremedied for thirty days after written notice from the Secured Party to the Debtor specifying the default and demanding the same to be remedied;

(d) Any representation or warranty on the part of the Debtor made herein or in any report, certificate, financial or other statement furnished in connection with this Security Agreement or the Lease, or the transactions contemplated therein, shall prove to have been false or misleading in any material respect when made;

(e) Any claim, lien or charge shall be asserted against or levied or imposed upon the Equipment which is prior to or on a parity with the security interest granted hereunder; and such claim, lien or charge shall not be discharged or removed within 60 calendar days after written notice from the Secured Party to the Debtor and the Lessee demanding the discharge or removal thereof;

(f) The Debtor shall (1) be generally not paying its debts as they become due, (2) file, or consent to the filing against it of a petition for relief under any bankruptcy or insolvency laws, (3) make an assignment for the benefit of creditors, (4) consent to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other official with similar powers over the Debtor or a substantial part of its property, or (5) take corporate action for the purpose of any of the foregoing; or

(g) A court having jurisdiction over the Debtor or its property shall enter a decree or order in respect of the Debtor or such property in an involuntary case under any bankruptcy or insolvency law, or shall appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other official with similar powers over the Debtor or any such property, or shall order the winding-up or liquidation of the affairs of the Debtor, and such order or decree shall continue in effect for a period of 60 consecutive days.

5.2 When any such Event of Default shall occur and be continuing, the Indebtedness Hereby Secured shall, at the option of the Secured Party, become immediately due and payable and the Secured Party shall have the rights, options and remedies of a secured party under the Code and the Debtor shall have the

rights, options and duties of a debtor under the Code (regardless of whether the Code or a law similar thereto has been enacted in the jurisdiction wherein the rights or remedies are asserted), and without limiting the foregoing the Secured Party may exercise any one or more or all, and in any order, the remedies set forth in the Lease.

5.3 Any sale by the Secured Party whether under any power of sale hereby given or by virtue of judicial proceedings shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Debtor, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Debtor, its successors or assigns (subject, however, to the then existing rights, if any, of the Lessee under the Lease and to the rights and interest of the Debtor, its successors and assigns, in the proceeds of such sale which are in excess of the amount required to satisfy in full the Indebtedness Hereby Secured).

5.4 The proceeds of any sale of the Collateral or any part thereof, and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) To the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and the reasonable compensation of the agents, attorneys and the counsel of the Secured Party and of all reasonable expenses, liabilities and advances incurred or made hereunder by the Secured Party, or the holder or holders of the Note, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

(b) To the payment to the holder or holders of the Note of the amount then owing or unpaid on the Note for principal and interest, first to interest and then to principal; and in case any such proceeds shall be insufficient to pay the whole amount so due upon the Note then to the payment of such principal and/or interest then owing on the Note as the Secured Party or the holders of such Note shall elect;

(c) To the payment of any other Indebtedness Hereby Secured; and

(d) To the payment to the Debtor or to whomsoever may be lawfully entitled thereto of all sums remaining.

5.5 No delay or omission of the Secured Party, its

successors or assigns, or of any holder of the Note, to exercise any right or power arising from any default on the part of the Debtor shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Secured Party or any holder or holders of the Note of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom, except as may be otherwise provided herein.

#### SECTION 6. LIMITATIONS OF LIABILITY

Anything in this Agreement, the Note, the Lease, any certificate, opinion or documents of any nature whatsoever to the contrary notwithstanding, neither the Secured Party nor its successors or assigns, nor any holder or holders of the Note shall have any claim, remedy or right to proceed (at law or in equity) against the Debtor for the payment of any deficiency or any other sum owing on account of the Indebtedness Hereby Secured or for the payment of any liability of any nature whatsoever (except that the Secured Party shall have full recourse against the Debtor and the Debtor shall have personal liability for breaches of the Debtor's representations, warranties and covenants contained herein), from any source other than the Collateral, including the sums due and to become due under the Lease; and the Secured Party by acceptance of the Note waives and releases any liability of the Debtor for and on account of the Indebtedness Hereby Secured or such liability, except as provided above, and the Secured Party, its successors and assigns and the holders of the Note agree to look solely to the Collateral, including without limitation the sums due and to become due under the Lease, for the payment of the Indebtedness Hereby Secured or the satisfaction of such liability provided, however, nothing herein contained shall limit, restrict, or impair the rights of the holders of the Note to accelerate the maturity of the Note upon a default under this Agreement; to bring suit and obtain a judgment against the Debtor on the Note (provided the satisfaction thereof shall be limited to the Collateral, including without limitation the sums due and to become due under the Lease) or to exercise all rights and remedies provided under this Agreement or otherwise realize upon the Collateral, including without limitation the sums due or to become due under the Lease, including without limitation the right to proceed against the Lessee under the Lease. Notwithstanding anything to the contrary herein, the Secured Party shall have full recourse against the Debtor and the Debtor shall be personally liable for any breaches of the Debtor's representations, warranties and covenants contained herein.

## SECTION 7. MISCELLANEOUS

7.1 Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Agreement contained by or on behalf of the Debtor, or by or on behalf of the Secured Party, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

7.2 Release. The Secured Party shall release this Agreement and the lien hereof by proper instrument or instruments at such time as all Indebtedness Hereby Secured has been fully paid and satisfied, and the Secured Party shall at that time redeliver to the Debtor the executed original copy of the Lease delivered to the Secured Party concurrently with the execution and delivery of this Agreement.

7.3 Notices. All notices to be made hereunder shall be in writing and shall be deemed to have been duly given if sent by telex, if delivered personally or four days after being deposited in the United States registered or certified mail, first class postage prepaid, and in each case addressed as follows:

If to Debtor

CIS Rail Corporation  
909 Montgomery Street  
San Francisco, California 94133

Attention: President

If to Secured Party

Liberty Life Insurance Company  
P. O. Box 789  
Greenville, South Carolina 29602

Attention: Securities Department

Either party hereto may change the address to which notice to such party shall be sent by giving notice of such change to the other party to this Agreement as provided herein.

7.4 Applicable Law. This Agreement shall be interpreted and enforced between the parties in accordance with the laws of the State of California without regard to principles of conflict of laws; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, as amended, and such additional rights arising out of the filing,

recording or depositing hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Security Agreement shall be filed, recorded or deposited. This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, but all counterparts shall together constitute a single instrument.

7.5 Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Security Agreement shall not render any other provision herein contained unenforceable or invalid.

7.6 Amendments. This Security Agreement may, from time to time and at any time, be amended or supplemented by an instrument or instruments in writing executed by the parties hereto.

7.7 Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Security Agreement nor shall they affect its meaning, construction or effect.

7.8 Effective Date. Although this Security Agreement is dated as of the date first above written for convenience, the actual dates of execution hereof by the Debtor and the Secured Party are respectively the dates set forth in the acknowledgements hereto, and this Security Agreement shall be effective on the latest of such dates.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed all as of the day and year first above written.

CIS RAIL CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

LIBERTY LIFE INSURANCE COMPANY

By: Douglas W. Kroske

Douglas W. Kroske

Title: Assistant Vice President

Attest: Emelyn M. Angelotti

Asst. Secy

STATE OF CALIFORNIA            )  
                                  :        ss.:  
COUNTY OF SAN FRANCISCO    )

On the \_\_\_\_ day of September, 1985, before me personally appear \_\_\_\_\_, who being by me duly sworn, did say that he/she is an Authorized Officer of CIS RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its by-laws and by resolution of its board of directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

(NOTARIAL SEAL)

My commission expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA    )  
                                  :        ss.:  
COUNTY OF Greenville    )

On the 17<sup>th</sup> day of September, 1985, before me personally appeared Baughman W. Kroske, who, being by me duly sworn, did say that he/she is an Authorized Officer of LIBERTY LIFE INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its by-laws and by resolution of its board of directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Mary Lou Brown  
Notary Public

(NOTARIAL SEAL)

My commission expires: 12/13/87



**Schedule A**

**EQUIPMENT DESCRIPTION**

**Equipment described as follows:**

One (1) General Motors Corporation (Electromotive Division) Model SD-40-2, 3,000 horsepower locomotive constructed pursuant to Specification 8087, and rebuilt pursuant to the Locomotive Manufacturing Agreement dated as of December 20, 1984, between the Debtor and the Lessee, bearing the Lessee's road number 637.

EXHIBIT A  
CERTIFICATE OF TRANSFEREE

As the Transferee referred to in the Security Agreement and Assignment, dated as of September 16, 1985 (the "Security Agreement"), between CIS Rail Corporation (the "Lessor") and Liberty Life Insurance Company (the "Lender"), and the Assignment of Lease and Agreement, dated as of September 16, 1985 (the "Assignment"), from the Lessor to the Lender, the Transferee hereby represents, warrants, agrees and covenants to such Lender as follows (except as set forth herein, the terms used in this Certificate shall have the same meaning as set forth in the Security Agreement):

(a) The Transferee is a corporation [partnership] duly organized and existing [in good standing] under the laws of the State of \_\_\_\_\_, and has full power and authority to enter into and perform the Transferee's obligations under this Certificate of Transferee, [list purchase and resale documents] and the agreements, certificates and instruments contemplated by all of the foregoing (collectively, the "Transfer Documents").

(b) The Transfer Documents have been duly authorized, executed and delivered by the Transferee and constitute legal, valid, and binding agreements and obligations of the Transferee, enforceable in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally or by legal or equitable doctrines

which may limit the availability of specific performance under specific circumstances.

(c) The performance by the Transferee of its obligations under the Transfer Documents will not subject the Collateral to any lien, charge, or encumbrance (other than the liens and security interests provided or permitted in the Security Agreement and the Assignment or [list applicable Transfer Documents]) under any indenture, mortgage, contract, or other instrument to which the Transferee is a party or by which the Transferee is bound.

(d) In consideration of the Lender's having made the Loan to the Lessor pursuant to the Security Agreement, the Transferee hereby (i) acknowledges the first security interest of the Lender in the Collateral described in the Security Agreement, (ii) waives any objection to the validity or enforceability of the Security Agreement or the Assignment, (iii) agrees that its right, title, and interest (including security interests) in and to the Equipment, the Lease and any other Collateral is and shall be expressly subject and subordinate to the right, title, and interest of the Lender therein, (iv) grants to the Lender a security interest in all of the Transferee's rights in the Collateral, (v) agrees that upon the occurrence of an event of default under Section 5.1 of the Security Agreement, the Lender may exercise and enforce the rights and remedies set forth therein against the right, title and interest of the Transferee in and to such Collateral, (vi) agrees that the Transferee has

not sold and shall not sell, assign, convey, transfer, exchange, create a security interest in or otherwise dispose of any of the Equipment or take any other action with respect thereto (except for any sale or transfer by the Transferee to [NAME OF OWNER] pursuant to the Transfer Documents) without the prior written consent of the Lender, (vii) agrees that it will not amend, waive, discharge or terminate any term or provision of the Lease or give any consent thereunder, without the prior written consent of the Lender, (viii) agrees that it will not take any action to disturb the quiet use, possession and enjoyment of the Equipment by the Lessee under the Lease and by any other lessee or sublessee thereof not in default under its lease obligations under any lease or sublease permitted by the Lease, (ix) agrees that it will not do any act or thing which would cause a breach or default by the Lessor under any lease or sublease permitted by the Lease, (x) agrees that any provision of the Transfer Documents inconsistent with this Certificate shall be null and void as against the Lender, or with respect to the Collateral (until the security interest of the Lender shall have terminated), and (xi) agrees that upon reasonable request of the Lender, it will promptly and at its own expense execute and deliver any and all such further instruments and documents as the Lender may reasonably deem desirable to better assure and confirm to the Lender the benefits, powers, and remedies of this Certificate.

[NAME OF TRANSFeree]

By \_\_\_\_\_

Title \_\_\_\_\_